Virginia Administrative Dispute Resolution Act

AGENCY COORDINATOR TRAINING

August 26 and 27, 2003

VADRA

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THE
VIRGINIA ADMINISTRATIVE DISPUTE RESOLUTION ACT
Dispute Resolution Coordinator Training

August 26 and 27, 2003 – 4 sessions

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Virginia Administrative Dispute Resolution Act

(Va. Code §§2.2-4115 through -4119)(became effective 7/1/02)

The Act:

- Encourages the use of alternative dispute resolution methods by local governments and state executive and legislative branch agencies across a broad range of governmental functions
- Requires each executive branch agency head to appoint an employee to serve as the agency's Dispute Resolution Coordinator
- Creates an **Interagency Dispute Resolution Advisory Council** within the state's executive branch composed of two Dispute Resolution Coordinators appointed by each Cabinet Secretary from the pool of Coordinators in his or her Secretariat; three private sector members appointed by the Governor; the Director of the Department of Employment Dispute Resolution; and as Chair, the Secretary of Administration
- Requires each executive branch agency to develop policies addressing its use of ADR

The Interagency Dispute Resolution Advisory Council:

- Provides guidance, training and consultation to state executive branch agencies in drafting and implementing their individual ADR policies
- Will report to the Governor and the General Assembly on the use of ADR in state agencies
- Will recommend changes to the law as needed

Key Points for Agency Leaders:

- **Think broadly.** State and local governments benefit from using proactive, problem-solving approaches to *prevent* unproductive conflict as well as alternative resolution practices such as mediation to *resolve* disputes that occur. Also, while all executive branch agencies have long had mediation coordinators in their HR departments for the workplace program provided by the Department of Employment Dispute Resolution, the Va. ADR Act is not just for employment issues. The Act applies to a wide range of government functions such as procurement and construction contracting, consumer protection, professional licensure, community planning, environmental, special education, and state regulated business franchises.
- **This will be a committed, steady, and evolving process.** The Council will provide guidelines for agencies in developing their internal ADR policies and will serve as an ongoing resource for their implementation and further development. For the foreseeable future, one of the Council's top priorities will be laying a strong, stable foundation to assure that the Act's goals are met and

sustained over time, throughout changing administrations. Long-term success will require planning, focus, and demonstrating to the Commonwealth's citizens the benefits of ADR in government.

Virginia Administrative Dispute Resolution Act
Va. Code § 2.2-4115 through -4119

§ 2.2-4115. Definitions.

As used in this chapter, unless the context requires otherwise:

"Dispute resolution proceeding" means any structured process in which a neutral assists parties to a dispute in reaching a voluntary settlement by means of dispute resolution processes such as mediation, conciliation, facilitation, partnering, fact-finding, neutral evaluation, use of ombudsmen or any other proceeding leading to a voluntary settlement. For the purposes of this chapter, the term "dispute resolution proceeding" does not include arbitration.

"Mediation" means a process in which a neutral facilitates communication between the parties and without deciding the issues or imposing a solution on the parties enables them to understand and resolve their dispute.

"Mediation program" means a program of a public body through which mediators or mediation is made available and includes the director, agents and employees of the program.

"Mediator" means a neutral who is an impartial third party selected by agreement of the parties to a dispute to assist them in mediation.

"Neutral" means an individual who is trained or experienced in conducting dispute resolution proceedings and in providing dispute resolution services.

"Public body" means any legislative body; any authority, board, bureau, commission, district or agency of the Commonwealth or any political subdivision of the Commonwealth, including counties, cities and towns, city councils, boards of supervisors, school boards, planning commissions, boards of visitors of institutions of higher education; and other organizations, corporations or agencies in the Commonwealth supported wholly or principally by public funds. "Public body" includes any committee, subcommittee, or other entity however designated, of the public body or formed to advise the public body, including those with private sector or citizen members and corporations organized by the Virginia Retirement System. For the purposes of this chapter the term "public body" does not include courts of the Commonwealth.

"State agency" or "agency" means any authority, instrumentality, officer, board or other unit of state government empowered by the basic laws to adopt regulations or decide cases. For the purposes of this chapter, the term "state agency" does not include the courts of the Commonwealth.

(2002, c. 633.)

§ 2.2-4116. Authority to use dispute resolution proceedings.

A. Except as specifically prohibited by law, if the parties to the dispute agree, any public body may use dispute resolution proceedings to narrow or resolve any issue in controversy. Nothing in this chapter shall be construed to prohibit or limit other

public body dispute resolution authority. Nothing in this chapter shall create or alter any right, action, cause of action, or be interpreted or applied in a manner inconsistent with the Administrative Process Act (§ 2.2-4000 et seq.), applicable federal or state law or any provision that requires the Commonwealth to obtain or maintain federal delegation or approval of any regulatory program. Nothing in this chapter shall prevent the use of the Virginia Freedom of Information Act to obtain the disclosure of information concerning expenses incurred in connection with a dispute resolution proceeding or the amount of money paid by a public body or agency to settle a dispute.
B. A decision by a public body to participate in or not to participate in a specific dispute resolution proceeding shall be within the discretion of the public body and is not subject to judicial review. This subsection does not affect or supersede any law mandating the use of a dispute resolution proceeding.
C. An agreement arising out of any dispute resolution proceeding shall not be binding upon a public body unless the agreement is affirmed by the public body.
(2002, c. 633.)

§ 2.2-4117. State agency promotion of dispute resolution proceedings.
A. Each state agency shall adopt a written policy that addresses the use of dispute resolution proceedings within the agency and for the agency's program and operations. The policy shall include, among other things, training for employees involved in implementing the agency's policy and the qualifications of a neutral to be used by the agency.
B. The head of each state agency shall designate an existing or new employee to be the dispute resolution coordinator of the agency. The duties of a dispute resolution coordinator may be collateral to those of an existing official.
C. Each state agency shall review its policies, procedures and regulations and shall determine whether and how to amend such policies, procedures and regulations to authorize and encourage the use of dispute resolution proceedings.
D. Any state agency may use the services of other agencies' employees as neutrals and an agency may allow its employees to serve as neutrals for other agencies as part of a neutral-sharing program.
E. This chapter does not supersede the provisions of subdivision 2 of § 2.2-1001 and subdivision B 4 of § 2.2-3000, which require certain agencies to participate in the mediation program administered by the Department of Employment Dispute Resolution.
(2002, c. 633.)

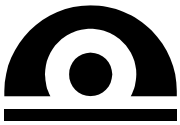
§ 2.2-4118. Interagency Dispute Resolution Advisory Council.
A. The Interagency Dispute Resolution Advisory Council is hereby created as an advisory council to the Secretary of Administration.
B. The Council shall consist of two dispute resolution coordinators from each Secretariat appointed by each Secretary, the Director of the Department of

Employment Dispute Resolution, and three persons who are not employees of the Commonwealth, at least two of whom have experience in mediation, appointed by the Governor. The appointees who are not employees of the Commonwealth may be selected from nominations submitted by the Virginia Mediation Network and the Virginia State Bar and the Virginia Bar Association Joint Committee on Alternative Dispute Resolution, who shall each nominate two persons for each such vacancy. In no case shall the Governor be bound to make any appointment from such nominations. The Secretary of Administration or his designee shall serve as chairman of the Council.
C. The Council shall have the power and duty to:
1. Conduct training seminars and educational programs for the members and staff of agencies and public bodies and other interested persons on the use of dispute resolution proceedings.
2. Publish educational materials as it deems appropriate on the use of dispute resolution proceedings.
3. Report on its activities as may be appropriate and on the use of dispute resolution proceedings, including recommendations for changes in the law to the Governor and General Assembly.
D. Every state agency shall cooperate with and provide such assistance to the Council as the Council may request.
(2002, c. 633.)

§ 2.2-4119. Confidentiality between parties; exemption to Freedom of Information Act.
A. Except for the materials described in subsection B, all dispute resolution proceedings conducted pursuant to this chapter are subject to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).
B. All memoranda, work products, or other materials contained in the case file of a mediator are confidential and all materials in the case file of a mediation program pertaining to a specific mediation are confidential. Any communication made in or in connection with a mediation that relates to the dispute, including communications to schedule a mediation, whether made to a mediator, a mediation program, a party or any other person is confidential. A written settlement agreement is not confidential unless the parties agree in writing. Confidential materials and communications are not subject to disclosure or discovery in any judicial or administrative proceeding except (i) when all parties to the mediation agree, in writing, to waive the confidentiality; (ii) to the extent necessary in a subsequent action between the mediator and a party for damages arising out of the mediation; (iii) statements, memoranda, materials and other tangible evidence, otherwise subject to discovery, which were not prepared specifically for use in and actually used in the mediation; (iv) where communications are sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice filed against the mediator; (v) where a threat to inflict bodily injury is made; (vi)

where communications are intentionally used to plan, attempt to commit or commit a crime or conceal an ongoing crime; (vii) where communications are sought or offered to prove or disprove a claim or complaint of misconduct or malpractice filed against a party, nonparty, participant or representative of a party based on conduct occurring during a mediation; (viii) where communications are sought or offered to prove or disprove any of the reasons listed in § 8.01-576.12 that would enable a court to vacate a mediated agreement; or (ix) as provided by law or rule other than the Virginia Freedom of Information Act (§ 2.2-3700 et seq.). The use of attorney work product in a mediation shall not result in a waiver of the attorney work product privilege. Unless otherwise specified by the parties, no mediation proceeding shall be electronically or stenographically recorded.
(2002, c. 633.)

The Virginia Administrative Dispute Resolution Act (VADRA)



Prepared by the VADRA Interagency Council
Training and Education Subcommittee

August 26 & 27, 2003

Ways of Dealing with Conflict

- Avoidance
- "Traditional" Negotiation
- Alternative Dispute Resolution (ADR)
- Litigation
- Violence

What is the VADRA?

- §§ 2.2-4115 through 4119, Code of Va., effective 7-1-02
- Encourages use of ADR by local governments and state executive branch agencies in a variety of administrative areas
- Creates the Interagency Dispute Resolution Advisory Council

What is the VADRA? (cont.)

- Requires executive branch agencies to develop policies addressing the use of ADR
- Requires each agency head to appoint an employee to serve as the agency's Dispute Resolution Coordinator (DRC)

Key Points to Remember

- Think broadly
- This will be a committed, steady, and evolving process.

Shared Experiences

ADR: An Overview of Methods and Issues

What is ADR?

- ADR provides alternatives to, but does not take the place of, "Traditional Processes"
- ADR is voluntary
- ADR empowers and enables the parties to a dispute to seek solutions which ***they*** decide meet their needs
- Generally, ADR uses a neutral third party to help the parties communicate and resolve their dispute

Interest-Based Conflict Resolution Principles

- Focus on the issues
- Separate the people from the problem
- Explore the interest underlying the issues
- Look at ***needs*** (interests), not just ***wants*** (positions)
- Be alert for new possibilities
- Be open, creative
- Seek ways to meet both parties' needs
- Look for "win-win" solutions

Case Study

- What are each party's ***positions***?
- What are each party's underlying "***interests***?"
- Is there any common ground between any of their interests?
- If not resolved, what is the likely future of this situation?
- What might resolve (or improve) the situation now?

A Spectrum of ADR Methods

- Preventative methods
- Facilitated methods
- Input and Advisory methods
- Decisional methods

Reasons for Using ADR

- Faster
- Less costly
- Easier, less formality
- Less confrontational, adversarial
- Creative, practical solutions
- Avoiding precedent

Reasons for Using ADR (cont.)

- Better for on-going relationships
- Participant satisfaction
- Solutions with "buy-in" likely to last
- Neutrals may be chosen
- Little to lose by attempting ADR
- Parties retain control and outcome

Reasons ***not*** to use ADR

- Need for precedent or certainty
- Anticipation of bad faith
- When one party mainly seeks delay
- Public policy development – openness/record needed
- Options are dictated or limited by law

Reasons ***not*** to use ADR (cont.)

- Serious power imbalances exist
- Linkage to other litigation
- Outcome will have significant effect on other people
- ADR as improper substitute for other required action

Interest-Based Problem-Solving

- No third party
- Parties agree to use an interest-based model:
  - Set communication & decision "ground rules"
  - Jointly identify issues, criteria for success
  - Joint brainstorming, selection of options
  - Emphasize respect, cooperation, listening
  - Seek to meet ***their*** needs to meet ***yours***
  - Focus on future, escape from past

Partnering

- Pioneered by U.S. Army Corps of Engineers
- A government/contractor *team* meets to:
  - Identify potential future disputes
  - Tailor methods for each potential dispute
  - Develop relationships to avoid conflict
- Work is done in a facilitated "workshop"shortly after a contract is signed

Ombuds

- State employee or contractor designated to:
  - Help customers with service
  - Offer employees an "ear"
  - Funnel complaints to right place
  - Resolve conflict early and informally
  - Advise management on systemic problems
  - Be part of a proactive process

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Mediation

- Very common ADR method
- Voluntary, structured, confidential
- Also known as "*facilitated negotiation*"
- Often future-oriented
- Mediator a trained, neutral expert
- Oriented to parties' ***self-determination***
- Mediator doesn't "decide" anything

Goals of Mediation

- Allow parties to express their feelings
- Help parties see each other's perspectives
- Help clear up misunderstandings
- Help determine underlying interests
- Help parties recognize their overlapping interests and areas of agreement
- Help parties devise their own solutions, building on the interests they identified.

Facilitation

- A ***group*** process
- Group usually has a ***goal*** in mind
- Facilitator "directs traffic," clarifies, and records
- Facilitator usually does considerable advance preparation with parties

Facilitation (cont.)

- Facilitators often use a "six-step" process:
  - Identify and clarify issues
  - Select an issue and discuss thoroughly
  - Develop criteria for evaluating options
  - Brainstorm ideas
  - Analyze, select, and refine ideas
  - Develop implementation plan

Regulatory Negotiation *

- Variation of notice and comment (APA) rulemaking
- Agency forms a rule-making committee
- Committee represents those affected by rule
- Committee develops the ***proposed*** rule by consensus
- A facilitator leads the committee
- Agency retains total authority over ***final*** rule

* ***Not specifically authorized by VADRA***

ADR Panels

- May be labor/management, consumer, etc.
- Panel reviews parties' evidence and statements
- Panel may attempt conciliation
- Panel may decide or make recommendations
- Members usually trained in sensitive handling

Early Neutral Evaluation

- The neutral 3rd party evaluates ***merits*** of an issue
- The neutral is an experienced subject-matter expert
- The parties negotiate after hearing the neutral's opinion

Fact-finding

- The neutral 3rd party investigates and determines a disputed fact
- Often used for technical issues, discrete factual issues that are part of a larger dispute
- May be a "time-out" part of mediation
- Parties may negotiate to be bound (or not) by finding

Mini-trial

- "Judges" are panel of disputant's decision-makers
- Panel receives summary case presentations
- Panel asks questions, tests presentations
- Panel then negotiates and seeks consensus
- A way for parties to retain control and resolve:
  - Where trial would be long and complex
  - Where dispute involves technical matters

Settlement Conferences

- Usually court-ordered
- Encourages litigants to narrow and resolve issues
- Judge or other neutral presides
- Usually, the Judge at the conference is not the Judge at trial
- Judge leads discussion of settlement options
- Judge may advise on law, precedent, and likely outcome

Arbitration *

- Adjudicatory: Arbitrator is "private judge"
- Often contract based
- Arbitrator often has subject-matter expertise
- Final decision has few appeal possibilities
- Decisions usually short, not precedential
- Controversial in some contexts
- Can include "non-binding" versions

** **Not available under VADRA***

Shared Experiences

Group Discussion

Resource Materials

Developing a policy and implementing a program

Data collection

Wrap-up and evaluation

Guidelines for Agency Dispute Resolution Coordinators

What is a Dispute Resolution Coordinator?

Governors, legislatures and agencies have begun to establish Dispute Resolution (DR) programs in state government through executive orders and legislation and to encourage greater use of collaborative decision making processes. The responsibility for leading and staffing implementation efforts at the agency level is often placed in the hands of Dispute Resolution Coordinators or similarly titled people. Approaches to establishing DR coordinators, and issues that arise such as capacity and resources, depend upon whether a statewide effort is underway to integrate dispute resolution in state government, versus whether a single agency decides to employ dispute resolution more widely.

The DR Coordinator designation is a loose one. Coordinators may range from high-level political appointees to career civil servants. Also, a coordinator's role may vary depending upon the state or agency. The role may include collecting data, making and implementing plans and programs, providing training, coordination and/or technical assistance. It also could involve managing, tracking and evaluating program activities.

Whatever the duties, the trend toward establishing agency DR Coordinators reflects:

A) the growing importance of DR in a state's or agency's decision making, and
B) the importance of assigning responsibility (having a point person) for DR implementation within an agency.

States that have undertaken statewide efforts involving multiple agencies have found a need to provide resources and coordination-including consultation, technical assistance, and training to their network of DR Coordinators.

To date, three states have enacted executive orders to integrate DR in state government-Massachusetts, Oregon, and New Mexico. These executive orders call on agencies to appoint DR Coordinators and make assessments of their agencies' DR needs, and then develop and implement plans. Massachusetts and Oregon have statewide offices of dispute resolution that serve as resource centers, providing a centralized source of expertise. They provide guidance, training and technical assistance for state agencies on DR policies and practices. New Mexico has an ADR Council made up of representatives from various agencies, but no established resource center. This lack of a central resource center has presented some challenges in implementing the state's executive order.

Orientation and Training for DR Coordinators

Whether a state is only beginning to appoint agency DR Coordinators or is dealing with turnover of coordinators, it is important to offer initial orientation and on-going training. At the minimum, the initial training should provide:

A) a background on DR in state government;
B) an overview of statutes and relevant policies;
C) a discussion of coordinators' roles and responsibilities;
D) an introduction to available resources (including people and information);
E) and an opportunity to identify their needs for further training and assistance.

See Oregon's and Massachusetts' orientation agendas for a useful example.

States with DR Coordinators have found that training is most effective when done over a period of time in two to four hour sessions. Levels of experience are likely to vary within the group, and this must be taken into account when planning the training activities. Some states find it useful to involve new coordinators in planning the training to ensure that their needs are met.

Overview of Agencies' Uses of DR Process

The term "**Dispute Resolution**" refers here to a collection of approaches that allow parties to engage in collaborative decision-making. Agencies should use the term carefully because it can be off-putting when parties do not think they are involved in a conflict or dispute. Other ways to describe these approaches include "joint problem solving", and "consensus building".

Dispute Resolution includes a range of processes from informal to formal; from unassisted negotiation to facilitated collaborative decision-making; from mediation to simple fact finding; early neutral evaluation, and/or arbitration. They include parties acting alone to resolve conflict through informal negotiation, or parties who seek assistance from a facilitator or mediator to help them resolve conflicts or issues. Parties may also ask a fact finder or arbitrator to resolve the dispute for them.

DR processes can be used both proactively and reactively. A **proactive approach** begins when an issue is known to be contentious, and early involvement of key parties can help manage any inevitable conflicts and build consensus on solutions. **Reactive approaches** are responses to contentious issues that have developed into full-blown disputes.

Agencies use a variety of collaborative problem solving and dispute resolution processes. DR Coordinators are responsible for promoting the appropriate steps and processes an agency should follow, and should become highly familiar with the range of DR approaches that are available. There are numerous books and articles describing these processes and their use in government settings.

Dozens of state and federal agencies have established dispute resolution programs. For a listing of state agency DR programs, see PCI's on-line Directory of State Dispute Resolution Programs.

For federal listings, see the Office of Personnel Management's Alternative Dispute Resolution: A Resource Guide.

Agencies use dispute resolution processes both **internally** (to resolve workplace disputes or to address intra-agency issues collaboratively) and **externally** (to work out agreements and mediate disputes over policy formulation, implementation and enforcement). Process assistance such as mediation, has also proven extremely valuable for intergovernmental issues, as well as with inter-agency policy issues.

While mediation typically occurs in the context of specific disputes involving a limited number of parties, facilitated processes are used to develop and implement broad policies and typically involve numerous participants who represent a number o f interests. The latter are often termed consensus processes, policy dialogues, or negotiated rulemakings. "Process assistance" has been useful in numerous settings where full consensus may not be practicable. These include facilitated processes to promote information exchange or collaboration in connection with inter and intra-agency work groups, or for the purposes of involving the public.

PCI's Practical Guide to Consensus offers advice on assessing the potential for, and the use of, consensus processes. Also useful is the Oregon Dispute Resolution Commissions' Collaborative Approaches: A Handbook for Public Policy Decision Making and Conflict Resolution.

Consensus processes have been employed since the mid 1970s to develop scores of potentially controversial federal and state rules, policies, and legislative proposals addressing environmental problems, regulating health and safety concerns, and allocating scarce budgetary or other public resources. An example of one such state process is featured in a PCI produced video titled Building Consensus: Transportation Rulemaking in Oregon (2000). Also useful are: Jim Arthur's A Guide to Negotiated Rulemaking and Pilot Rulemaking; Matt McKinney's Negotiated Rulemaking: Involving Citizens in Public Decisions; and the Texas Negotiated Rulemaking Deskbook.

Agencies have found DR assistance to be especially helpful in government contracting both before hand, in setting up provisions to use DR in contract clauses, and later in resolving contracting disputes. An agency may seek the assistance of a **neutral** in determining what the substantive outcome should be through a process like early neutral evaluation, fact-finding, mini-trial or settlement conference. The neutral assists the parties in a structured exchange of information. After the presentation of information, the neutral may advise the parties on the strengths and weaknesses of their respective positions. The neutral helps the parties understand how a situation is likely to play out; the downside risks as well as the upside possibilities from the perspective of a disinterested, knowledgeable third party. Such a neutral can help the parties gain an understanding that will let them negotiate more realistically and effectively even when they do not have assistance.

There are also processes (e.g., ombuds, partnering) that focus on improving information flow, or on building cohesive relationships, or constructive relations between parties, so problems can be detected early and dealt with to prevent escalation. Recently, a number of state agencies that oversee large construction projects have employed partnering procedures. **Partnering** is a process in which parties to large, ongoing contract establish at the outset a collaborative approach to avoiding and addressing conflicts in order to reduce the number of claims and

adversarial proceedings. Some useful examples include: a federal report titled Partnering for Success: A Blueprint for Promoting Government-Industry Communication and Teamwork; CPR's Procedures and Clauses links; and the U.S. Air Force's ADR site on contracting. The 1996 Report of the Dispute Avoidance and Resolution Task Force of the American Arbitration Association is another useful tool.

Key Elements in Integrating DR in an Agency

"Integrating dispute resolution" refers to creating a conflict resolution system within a governmental context that works efficiently. That is, a system that allows the agency to take full advantage of DR or other collaborative processes where most appropriate. There is no one way to do this, and no foolproof system. The hallmark if instituting an agency DR program should be flexibility to develop a program that serves the context, the issues and the parties.

In getting started, DR Coordinators should bear in mind the following key elements to launching a successful program:

- **Collaborate.** Take a collaborative approach to designing and implementing a new DR program. State agencies have learned that a DR program based on input from internal and external stakeholders will face less resistance and have greater probability of success than one that is imposed on them.
- **Get help.** Implementing DR is not a one-person job and it requires involvement of people from many different parts of an agency. It often requires initiating some "culture change" within a bureaucracy. One useful way to share the work and give others an investment in program success is to include them on a working or advisory group. Often there are other DR resources in state government such as centralized state DR offices that can provide consultation and technical assistance. See the PCI Directory of State DR Programs to identify resource centers in your state.
- **Get high-level support.** New governmental programs tend to thrive only when they receive support from top-level leaders. DR Coordinators should seek a statement from the agency head or other high-level leader championing the use of DR and asking agency personnel to cooperate with the DR Coordinator. They should also seek leaders' visible involvement, such as coming to the training sessions to explain the importance of DR, especially when it is mandatory. These and other conspicuous efforts by top agency officials can be very effective in promoting the program.
- **Analyze where DR can be most helpful.** Getting a program off the ground will be easier if it is designed to help agency personnel deal with the tough issues, problems, and disputes they face. Begin by exploring systematically which of these issues or disputes will be most amenable to DR methods. This analysis or assessment may be undertaken as part of developing an overall agency plan, but may also be done in the context of assessing a particular program or conflict for its DR collaborative potential.
- **Use pilot programs.** Pilots offer a manageable way to address basic issues, find and deal with "bugs", and provide success stories.

There are a few keys to successfully introducing DR in a state agency, no matter what kinds of issues or disputes the program will be designed to address. They are:

Use a Collaborative Approach. Collaborative program design will increase buy-in and program quality. Collaboration involves identifying internal and external stakeholders at the earliest possible opportunity and involving them as much as possible in conceptualizing a new program. Agency leaders, staff and users need opportunities to provide input and feedback, and to have a sense that their input makes a difference.

Building support within an agency involves engaging others. It is not only important to find leaders at the highest level of the agency, but also to identify champions among highly respected peers and co-workers. Leadership with government agencies is not only vertical but horizontal.

Collaboration includes working with stakeholders to determine how to:

1. use DR to meet agency needs;
2. educate the relevant actors about these methods and how they may be employed;
3. determine how to meet resource needs;
4. identify barriers to effective conflict resolution, and
5. identify incentives to overcome the barriers.

Forms of Alternative Dispute Resolution (ADR)

Dispute Resolution Method	Definition
Mediation	A process in which a trained neutral third party helps disputants negotiate a mutually agreeable settlement. The mediator has no authority and does not render a decision but may suggest some substantive options to encourage the parties to expand the range of possible resolutions under consideration. Any decision must be reached by the parties themselves.
Facilitation	A collaborative process in which a neutral seeks to assist a group of individuals or other parties to discuss constructively a number of complex, potentially controversial issues.
Regulatory Negotiation	Rather than promulgate a rule by the normal "notice and comment" procedure, an administrative agency attempts to negotiate the text of a rule or regulation with the stakeholders who will be impacted by the rule or regulation. It is also called *Negotiated Rulemaking*. If the agency and the stakeholders agree on the terms of the rule, the agency then promulgates the rule through its normal notice and comment procedure. This process is usually managed by a mediator.
Fact Finding	A third party neutral (having any relevant technical or scientific expertise) is employed to determine the key disputed facts. Depending on the parties' preference, the factual findings may or may not be binding in the event of subsequent litigation. While the neutral determines the facts, s/he does not apply the law to the facts or otherwise decide how the dispute should be resolved. Rather, after the neutral submits the factual findings, the parties attempt to negotiate a settlement. The negotiation may or may not be facilitated by a mediator.
Conciliation	The process of resolving a dispute through the use of various ADR techniques and systems that are self-applied and do not necessarily rely on a third party neutral.
Early Neutral Evaluation	A third party meets with the parties at the outset of litigation to clarify the parties' positions and identify key factual issues in dispute. The neutral then assists the parties in identifying what additional information they need to make an informed settlement decision, designs a limited discovery plan to gather the information in a cost-effective way and, after the limited discovery is complete, mediates settlement negotiations. Early Neutral Evaluation can be employed where no court proceeding is pending if the parties are willing to voluntarily exchange relevant information.
Policy Dialogues	A process by which an administrative agency consults informally with representatives of all stakeholder groups in an interactive manner where views are exchanged, analyzed and criticized. The objective is to identify points of disagreement, explore perceived risks and search for shared interests. It may or may not occur in connection with a rulemaking proceeding. If it occurs in connection with rulemaking, the dialogue continues periodically until the rule is promulgated.
Peer Review	A panel of employees (or employees and managers) who review evidence and listen to the parties' arguments to decide an issue in dispute. Peer review panel members are trained in the handling of sensitive issues. The panel's decision may or may not be binding on the parties.
Management Review Board	Similar to peer review, a panel of managers who review evidence and listen to the parties' arguments to decide an issue in dispute. Board members are trained in the handling of sensitive issues. The decision of the board may or may not be binding on the parties. Also called dispute resolution boards.
Arbitration	A process in which a neutral third party is empowered to decide disputed issues after hearing evidence and arguments from the parties. The arbitrator's decision may be binding on the parties either through agreement or operation of law. Arbitration may be voluntary (i.e., where the parties agree to use it) or may be mandatory and the exclusive means available for handling certain disputes.

PRINCIPLES OF ADR SYSTEMS DESIGN

1. What a system should *not* do:

   - It should not be a substitute for good management, good communication, and respect for others.
   - It should not displace systemic responses to systemic problems.
   - It should not be used as "band-aid" or to make problems "go away." ADR needs to be an integral part of an overall sound system of management.
   - It should not focus only on "cases." The broader scope of ADR systems should include ***preventative*** strategies, such as training in conflict management for supervisors and managers and organizational development with conflict management as a component.

2. Systems design, review and adjustment should always start with some information on basics, including the following:

   - What is the perceived problem, which prompts interest in ADR and change?
   - What are the main kinds of conflict or disputes arising in the organization? What do the numbers show – history, today, projections of cases? How do cases typically arise?
   - What is the organization's culture and mission, and how do those factors relate to how conflict/disputes arise and are resolved (or not)?
   - How are disputes handled now? What works well, what does not?
   - What are the results of the current process – time, costs, satisfaction, long-term?
   - Who/what parts of the organization are key stakeholders in approving and making any change a success?

3. In reviewing, designing, re-designing and evaluating the ADR system, stakeholders should be fully involved. In particular, to avoid "turf" problems and confusion for users/employees, it is important to clarify relations with existing dispute-resolution entities (Ombuds, personnel/human resources offices, in-house lawyers, etc.)

4. The ADR system should be *accessible*. People should know that the system exists, have a good idea of what it can do for them, and know where to go to use it or find out more.

5. Users (employees, managers, customers) must perceive the system as *trustworthy.*

6. The system should be *simple to use and understand.*

7. The system should be *adapted to the organization's culture.*

8. The system should intercept potential problems as *early as possible.*

9. The system should resolve disputes at the *lowest organizational level possible.*

10. The system should involve the *least process, procedures, and bureaucracy possible.*

11. The system should be *flexible* and able to use any ADR method appropriate, so ADR can be *tailored* to the needs of a given situation.
12. The system should have an *"intake" point, which is well trained and empowered* to determine whether, and what kind, of ADR is appropriate in a given situation.

13. The system should include several kinds of *training*, which needs to be on going:

- "Marketing" and awareness training, to foster recognition of the value of ADR, how to use it, and where to get it.
- Training for everyone (and supervisors/managers in particular) in conflict management, communication skills, how to deal with "difficult people," preventative use of interest-based approaches, and personal interest-based negotiation skills.
- "User" training for those who participate in ADR as negotiators or management representatives.
- Skills training of neutrals, intake personnel, EEO counselors and others with a more direct role in managing or providing ADR services.

14. Myths about training:

- Everyone should be trained as mediators.
- If you teach people about ADR, they will use it.

15. Barriers and resistance to ADR can come from many sources. Common ones are:

- General inertia and resistance to change.
- The profound *differentness* of ADR.
- Fears – loss of control, weakness, loss of present power, the unknown, conflict with images, negative implications of rhetoric (e.g., "compromise" and "collaboration"), overcoming a culture of suspicion.
- Over-generalizing ADR's inapplicability.
- Needing to justify one's own resolution *vs*. having a court order a result.

16. Overcoming barriers and resistance:

- Importance of leadership
- Understanding the present organization and its culture, and the interests of all those who are part of how disputes are produced and handled now. Try to make your ADR system fit the culture, rather than making the culture fit your system.

- Consult/make friends with all stakeholders, find ways to display benefits to them, help them perceive their ownership and the credit they will receive.
- Let the stakeholders play a major role in defining what "success" of an ADR system is, and consult them during evaluation (discussed below).
- Deal creatively with resource needs – a shortage of resources is a *beginning* point, not an *ending* point.
- Display success of others in similar situations.

- Incentives, rewards for stakeholders:

  - Recognition, publicity, being part of a new initiative
  - Increased efficiency, effectiveness, productivity
  - Relationship to other management reforms and organizational initiatives…team-building, restructuring, government initiatives, etc.
  - Improvement of workplace/customer relationships
  - Cost-savings
  - Personal financial/career enhancement

- Pilot projects: "starting small:"

  - Develop a pilot with success in mind
  - Look for allied stakeholders, build in their definition of success
  - Develop an evaluation protocol (keep in mind displaying success)
  - Link pilot to larger organization goals
  - Display results widely, including how it can be adapted elsewhere

17. Evaluation:

- Establish clear goals for success. Make them realistic and *obtainable.*
- Establish measures of success linked to goals. Use objective, outcome-oriented goals in preference to subjective goals where possible.
- Link criteria to organization's mission, strategic plan, and ADR-related goals.
- Consult with stakeholders for their view of what the criteria should be.
- In addition, consider who else will review your results (and what they will look for).
- Have on-going goals and measures for established programs as well as pilots.
- Establish responsibility for measuring and reporting. Involve stakeholders, skeptics.
- Make your evaluation protocol an on-going process lined to continuous improvement and growth of your ADR program.

Additional Resource: Federal ADR Network at Deborah.Laufer@erols.com

Agency ADR Assessment & Planning Tool

(This Assessment Tool is for internal agency use as an aid in developing an ADR Plan for your agency. Reference: 2001 Massachusetts Office of Dispute Resolution)

I. ASSESSMENT

A. What is the agency's mission? Is there a shared understanding of what the agency does, both within and outside the agency?

B. Does the agency have any policies, procedures, laws or regulations regarding the use of ADR?

C. List the various types of conflicts the agency experiences. Roughly estimate the number of each type of conflict the agency might experience in one year.

D. Using whatever general measure you choose, how much time is spent on each type of conflict? What types of conflicts are the most disruptive to the agency? Which types of conflicts are recurring?

E. In each type of conflict, does your agency play the role of: a) disputant, b) interested third-part, c) enforcer of laws or regulations, d) other?

F. For the most disruptive and/or recurring conflicts, who are the disputing parties? How organized are they? Are there other parties that frequently have a stake in the outcome of these conflicts?

G. For the most disruptive and/or recurring conflicts, what conflict resolution methods does your agency typically use? Who makes decisions about which conflict resolution forum to use? Why does your agency use these methods?

H. Do these conflicts get resolved? Do the resolutions last? Are the disputants generally satisfied with the resolutions?

I. For the most disruptive and/or recurring conflicts, what are the costs involved? staff time? expenses? What effect do they have on on-going relationships? on the organization's missions?

J. What is the earliest point and/or lowest level at which the agency regularly handles conflicts? Are there practices or systems in place to identify potential conflicts early?

K. Are agency meetings, both public and internal, effectively planned and facilitated?

L. Has the agency provided or sponsored training for its staff in meeting facilitation, negotiation, mediation, or some other aspect of ADR?

II. <u>PLANNING</u>

A. Having assessed the way conflict is handled in your agency, what is working well? What could be working better? What is missing?

B. What are the most important goal(s) for using ADR in your agency?

C. Where might ADR processes be used most effectively in your agency?

D. What obstacles or barriers to implementing ADR can you anticipate?

E. What resources, both within and outside your agency, are available for your use? How will you use these resources in: a) the ADR assessment, b) the creation of an agency ADR plan, c) designing an ADR system for your agency, d) providing intervention, mediation, facilitation, regulatory negotiation or some other ADR services.

F. How can your agency build its in-house capacity and improve its understanding of ADR?

G. Is there an interest or need for ADR training?

H. What systems or practices will the agency use to identify and review conflicts/disputes for ADR potential?
Describe how such identification and review system would work.

I. What benchmarks will you use to measure the success of your plan?

Overview – Training Managers About ADR

Managers generally are not interested in ADR as such – they ARE interested in:

- **Productivity (getting the job done!)**
- **Personal growth, developing personal skills**
- **Dealing with "problem" employees**
- **Maintaining a happy (or at least peaceful) workplace**
- **Not being the subject of complaints**
- **Direct and indirect costs of litigation (sometimes)**

Managers are adult learners, often sophisticated and jaded about training therefore:

- **Use first class training products (e.g., PowerPoint)**
- **Keep it short, make it "hands-on" and practical**
- **Use objective data to buttress points**
- **Start with a "bang" to get their attention**
- **Case studies may fit their model of analysis better than role-plays**
- **Start and end on time, tell them how to get more info**
- **If using their site, plan ahead – e.g., know their space and AV equipment**

Find out about their specific culture and try to use it in your training:

- **Doctors? Lawyers? Accountants?**
- **What are their specific incentives/disincentives to resolving complaints?**
- **Consult ahead to find examples of relevant conflict scenarios**

Buttress training with leadership and organizational allies of ADR

- **Get kick-off and other support from top and key personnel**
- **Link to internal ADR program personnel, legal, other influential "players"**
- **Find relevant "success stories" to display**

PRACTICAL TIPS FOR MANAGEMENT REPRESENTATIVES

-How to Participate Effectively in ADR-

Prepare, as for any negotiation:

- **Understand your organization's expectations of you in this role**
- **Find out the nature of the case, and any information available**
- **Consider management's interests, not just potential *positions***
- **Preliminarily consider the array of possible outcomes – *but stay flexible***
- **Forecast other authorities who may need to be consulted, and how**
- **If possible, have some concessions in reserve – "concessions breed concessions"**
- **Manage expectations of people on your side of the table**
- **Understand and manage or accommodate the perspectives of your lawyer**

Establish trust with the "other side:"

- **Use an open, respectful demeanor**
- **Establish that you are not seeking an agreement at all costs – you present in good faith to listen and to see if the dispute can be resolved in a way that works for everyone**
- **Say what you mean and mean what you say**
- **Find something to validate about the other side's circumstances**
- **Make promises and *keep* them**

Make it easy for the "Other Side" to see things your way:

- **Listen more than you talk – and *listen actively***
- **Be firm and rank, but respectful**
- **Remember: this may be your rare chance to access the other side directly**
- **Emphasize human terms, de-emphasize legal terms**
- **Allow them to express their emotions, be empathetic without "buying in"**
- **Leave them room to retreat (save face)**
- **Take a little heat!**
- **Be prepared to deal with ideas and options not considered before**

Let the mediator do the work of mediation

- **Be prepared to use confidential "caucus" to discuss options**

CONSIDERATIONS FOR CASE SELECTION

Factors that influence in favor of ADR include:

1. There is now or is likely to be a continuing relationship between parties.

2. There may be benefits to either party hearing directly from the opposing side.

3. Either party likely would be influenced by the opinion of a neutral third party.

4. The parties have indicated a desire to settle.

5. Either party needs a swift resolution of the dispute.

6. Substantive issues are complicated by problems of communication, anger, perceptions of disrespect, etc.

7. The parties want to avoid substantial legal costs.

8. Irrespective of the merits of the case, agency management wants prompt resolution – for example, to avoid interfering with workplace productivity, to avoid retaliation claims or spreading disgruntlement while a case sits, to avoid external effects and bad publicity, to enhance customer satisfaction, etc.

Factors favoring ADR relating to the nature of the case or dispute include:

1. The facts of the dispute are complex or of a complicated technical nature not well suited to litigation.

2. The parties desire to maintain flexibility in the relief they seek.

3. Trial preparation will be difficult, costly, and/or time-consuming, and these costs would outweigh any benefit that the Agency is likely to receive if the matter proceeds to court.

4. There is no need for a legal precedent in the matter.

5. There is a need to avoid an adverse legal precedent in this matter.

6. The defendant, if found liable, would face a great deal of legal exposure.

7. There is a reasonable probability of an unfavorable determination in factual issues.

8. ADR could significantly narrow the issues in controversy even if it is unlikely to lead to a complete resolution of the matter.

Negative Factors against using ADR

Here are some factors that may weigh against use of ADR. Not surprisingly, they are to a large degree the mirror image of the preceding pro-ADR lists.

1. There is a need for precedent on the issue in dispute.

2. A need exists for a public proceeding to resolve the issue or case.

3. There is need for a public sanction.

4. The matter is likely to settle soon without assistance.

5. The matter is very likely to be resolved promptly by motion in the agency's favor. However, avoid the appearance of using ADR only for your "weak" cases.

6. Either the opposing party or counsel representing the opposing party is not trustworthy.

7. A settlement would likely establish a precedent that would trigger additional claims and/or litigation.

8. An individual is sued in his or her person capacity as a Government (sic) employee.

9. There is reason to believe that the opposing party is engaging in fraudulent or criminal activity or will not act in good faith.

10. One or more of the parties is unable to negotiate effectively, with or without the assistance of counsel.

11. Injunctive relief is sought and no compromise or other relief is available or acceptable.

Additional Matters to Consider

Neutral factors that should be considered in making this determination are:

1. Does the dispute indicate that the parties have an agenda separate and apart from the specific issues if the case? For example, are there underlying issues of a primarily emotional content (for which mediation is ideal), or a lack of clarity about complex facts for which fact-finding may be better?

2. What is the history of the dispute?

3. What is the anticipated outcome of the dispute, and is either party likely to appeal?

4. Have all the facts necessary to settle the case been discovered? Keep in mind, however, that often it is better to use ADR as early as possible, before positions have hardened and costs increase, even without complete information.

5. Do the persons who would be involved in ADR have authority, or immediate access to authority, to settle the case?

6. Who is in charge of handling the dispute for each of the parties?

7. Are there significant factual or legal disputes or do the parties generally agree upon the most relevant facts or applicable legal precedent?

8. Is the opposing party an individual, a corporation, or another governmental entity? How does that affect the ability of the opposing party to participate in the ADR process?

9. Are there non-party individuals or entities with interests in the outcome of the dispute?

10. If applicable, what is the position of the case on the court's docket?

11. What are the likely expenses of litigation as opposed to the likely expenses of ADR?

12. Does the dispute involve policy implications?

13. What is the anticipated time frame for resolving the dispute by means of litigation and by means of ADR?

REFERENCE LISTING

www.policyconsensus.org

The Policy Consensus Initiative is a national non-profit program working with state leaders to establish and strengthen the use of collaborative practices in states to bring about more efficient governance.

www.vamediation.org

A Virginia non-profit member based organization promoting the professional growth of mediators, the exchange of ideas, and increased public awareness.

www.courts.state.va.us

The Department of Dispute Resolution Services of the Supreme Court of Virginia offers information regarding mediation certification, listing of currently certified mediators, and upcoming training opportunities.

www.abanet.org/dispute

This is the newsletter of the American Bar Association Section of Dispute Resolution.

www.acresolution.org

This is the quarterly magazine of the Association for Conflict Resolution (ACR). It is a merger of the former Academy of Family Mediators (AFM), the Society of Professionals in Dispute Resolution (SPIDR) and the Conflict Resolution Education Network (CREnet).

www.edr.state.va.us

The Virginia Department of Employment Dispute Resolution is a state agency that oversees the employee grievance procedure and provides training on conflict management issues. In addition, it coordinates the employment mediation program to help resolve employment disputes within state agencies.

Policy Statement: Implementation of the Virginia Administrative Dispute Resolution Act (VADRA)

As recognized by the Virginia Administrative Dispute Resolution Act ("VADRA" or "the Act") (Va. Code §§ 2.2-4115 through -4119), a fundamental function of government is collaborative problem solving, including the fair and efficient management of conflict and resolution of disputes. Litigation and other adversarial methods of dispute resolution, while necessary at times, are costly in terms of dollars, human resources, and good will. The use of alternative, non-adversarial processes to address stakeholder concerns can avoid these costs in many instances. Establishing effective alternative processes requires that agencies first carefully assess their missions, strategic plans, policies, operations, fiscal resources and any laws governing the use of a particular collaborative or dispute resolution process.

[Insert Agency Name] ("Agency") is committed to developing and promoting the use of stakeholder collaboration and alternative dispute resolution processes as appropriate and as set forth in the Act, through which Agency decision-makers and affected parties may reach mutually beneficial results without incurring the high cost of adversarial proceedings.

To that end, and with VADRA's Interagency Council (VADRA Council) as an ongoing resource for consultation and guidance, the Agency will, by [December 1, 2003]

(i) designate a qualified agency-wide Dispute Resolution Coordinator (DRC), and allow that employee to attend training for DRCs provided by the VADRA Council;

name and title of Agency's current DRC:

_____

(ii) using a reporting format to be provided by the VADRA Council, review and assess the current status of the agency's overall conflict management activities and submit its report to the Secretary of Administration, Chair of VADRA's Interagency Council;

(iii) review its policies, procedures and regulations to determine whether and how to amend them so as to authorize and encourage the use of collaborative practices and dispute resolution proceedings;

(iv) adopt written procedures that more specifically address the use of dispute resolution proceedings within the agency and for the agency's programs and operations; and

(v) provide training for employees involved in implementing the written procedures.

The Agency will also cooperate with and provide assistance to the VADRA Council as the Council may request, including periodic reports on the Agency's activities and any associated outcomes resulting from its efforts to promote and use collaborative practices, conflict management techniques, and alternative dispute resolution processes.

The VADRA Council will serve as a resource to the Agency by conducting training and briefing sessions, providing information and technical assistance in the development and use of such

practices in state government, and by serving as a networking device between DRCs statewide and with similar initiatives nationwide in other states.

Agency: _____

Agency Head Signature: _____

Agency Head Name: _____

Date: _____

ALTERNATIVE DISPUTE RESOLUTION Policy and Procedures Manual

sample template

Commonwealth of Virginia

Department of _____

MISSION

The mission or policy statement should highlight the agency's commitment to using ADR and the importance of the ADR program.

LAWS AND REGULATIONS

A statement of the pertinent ADR laws and other relevant laws and regulations that govern the agency's operations should be included.

DEFINITIONS

The agency should provide definitions of terms used in its policy and procedures, which are unique to its ADR program.

Sample of Definitions

"Department" means the Department of [agency name]

"VADRA" means Virginia Administrative Dispute Resolution Act

"Alternative Dispute Resolution (ADR) Proceeding(s)" means any structured process in which a neutral assists parties to a dispute in reaching a voluntary settlement by means of alternative dispute resolution processes such as mediation, conciliation, facilitation, or any other proceeding leading to a voluntary settlement.

"Mediation" means a process whereby a neutral third person facilitates communication between two or more parties to a dispute without deciding the issues or imposing a solution on the parties. The process is voluntary, informal and non-adversarial with the objective of helping the disputing parties reach a mutually acceptable and voluntary agreement. In mediation, decision-making authority rests with the disputants.

"Neutral" means an individual, such as a mediator, who is trained or experienced in conducting alternative dispute resolution proceedings.

PROGRAM GOALS AND OBJECTIVES

A clear and concise statement or program goals and objectives should be included.

Sample

It is the objective of the Department of expedite the resolution of complaints and to reduce the associated costs of processing disputes/complaints by offering consumers and regulants the opportunity to resolve all qualified complaints through alternative dispute resolution proceedings as authorized under the Virginia Administrative Dispute Resolution Act of 2002, Va. Code §§ 2.2-4115 through -4119 ("VADRA").

PROGRAM ADMINISTRATION AND PROCEDURES

Specify the roles and responsibilities of everyone involved in the program's administration and utilization. The agency should outline step-by-step procedures for administering, using, tracking and evaluating the program.

SELECTION OF NEUTRALS

State the criteria for selecting the evaluating neutrals/mediators and address ethical principles applicable to neutrals/mediators.

TRAINING AND MARKETING

Include training plans and expectations relevant to all agency staff and to staff specifically involved with the ADR program.

CASE STUDY BACKGROUND

A new agency is being formed called the Department of Statewide Planning and Resolutions and you have been appointed by the Governor to develop the agency and merge several existing agencies into it. This is a daunting task but so far most of the agencies have cooperated extremely well except for two: the Department of State Planning and the Department of Local Planning. In particular, the two Directors of Programs have not been cooperating to merge their Divisions into one Division. They both have asked to meet with you about the problem. Marlene Obseseon is the Director of Program Operations for the Department of State Planning and Bill Attibouy is the Director of Program Support for the Department of Local Planning. You have requested a background summary of both Marlene and Bill since you have not met either of them before.

Marlene has worked for the State for 4 years but has 15 years in planning and program development with private sector corporations. Her reputation is that she is tenacious and dogged in her task pursuits. To say that she gets obsessed with these tasks would be much too coincidental given her name, but she appears to get the job done. She is 41 years old and is fairly compulsive regarding health and fitness routines. Marlene also has her MBA degree.

Bill has worked for the Department of Local Planning for 25 years; he started as an 18 year old out of high school and worked his way up to his current Division Director position. He has taken college courses and a lot of specialty courses related to planning activities but he never finished his degree. He is very affable and well liked by most people and is considered to be a strong supporter of local government issues.

MARLENE OBSESEON'S STORY

I hate to bother you because I know you must be very busy, but I am very frustrated. I've only been working for the State for 4 years and it is somewhat of a shock coming from the private sector. The amount of red tape is unbelievable and now that my Department is being merged into the Department of Statewide Planning and Resolutions, it has gotten even worse! I've been told by the Secretary of Statewide Business Practices that my Division of Program Operations and Bill Attibuoy's Division of Program Support from the Department of Local Planning must be merged into one division. While I am not thrilled with this idea, I tackled it with a vengeance only to get little or no cooperation from Mr. Attibuoy. Not only was he evasive, but he did not attend several meetings I had arranged to discuss an implementation plan. I pride myself in being organized, but if I am to set up this division, then I need the details of his operation. I've even heard a rumor that he has been courting some of the local government leaders about absorbing his division into the local government. Wouldn't that be sweet! He gets to continue what he's doing and still would be in the retirement system. I get stuck with all the problems to solve and I'm not even vested yet! At this point, my orders are to work with Mr. Attibuoy and to merge our staffs into a functioning division, which is not very easy to do considering his avoidance behavior. It's a darn good thing that I work out regularly or my blood pressure would be sky high. It kills me to say this, but I think I need some help.

BILL ATTIBUOY'S STORY

Thank you for meeting with me. In case you haven't heard, things ain't too happy in River City! This merger of Departments, and my division in particular, is really getting on my nerves. Actually, it is not so much the merger as it is Marlene Obseseon! I know we are supposed to work together on this project but she makes it very difficult. She is pushy and she's not a women obsessed but one who is possessed! She sets up meetings for me without checking my schedule. She acts as though she is the boss. By the way, who is going to be the Director of this merged division? One minute I hear someone has been appointed and the next minute I hear that there will be an open recruitment. I have over 25 years of State service and I've never been treated so shabbily. In case you don't know, I have a very good reputation with the localities and I don't want to make any changes that will hurt that relationship. I may not be all that educated but I do a darn good job. I hate to admit this, but there is a part of me that wonders if merging my division with Marlene's is good business. Perhaps it should be part of local government. Has that ever been considered? If it hasn't, perhaps it should. I would be more than happy to switch to a local position. They have the same retirement system and I certainly cannot retire now….not with two kids in college! Although, if things don't improve with this merger, retirement is at least an option. It kills me to say this, but I think I need some help.